

Agenda Item Form

Agenda Date: 6-2-04

Districts Affected: All

Dept. Head/Contact Information: Norman C. Merrifield (Ext 4338)

Type of Agenda Item:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
☒ Grant (duration of funds: 4 Months)
☐ Other Source: _____

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): John Nance ☐ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

To provide transportation for participants in the Parks & Recreation Department's Club Rec Program and other summer programs.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

None

Statutory or Citizen Concerns:

None

Departmental Concerns:

None

TO 2 PM 12:00 PM
CITY CLERK'S OFFICE
JUN 2 2004

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign a Multi-Year Interlocal Agreement between the City of El Paso and the Ysleta Independent School District to provide District school buses for transportation purposes regarding the activities of the "Club Rec Program," Youth Outreach, and other programs of the City's Parks and Recreation Department.

PASSED AND APPROVED this 2nd day of June, 2004.

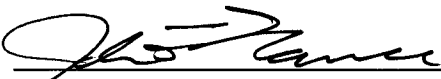
CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

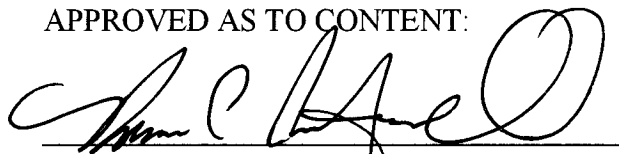
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D.
Director
Parks & Recreation Department

STATE OF TEXAS § MULTI-YEAR
§ INTERGOVERNMENTAL AGREEMENT
COUNTY OF EL PASO §

THIS Intergovernmental Agreement is made effective the date written on the signature page between the following Parties:

CITY City of El Paso, Texas

DISTRICT Ysleta Independent School District

RECITALS

WHEREAS, the District and the City intend to cooperate in providing recreational opportunities for children and;

WHEREAS, the District will provide transportation as requested by the City to facilitate the City Parks and Recreation Department's recreation programs, and as further set forth in this Agreement.

FOR THESE REASONS, and in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

ARTICLE ONE
No Agency Relationship

The Parties are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided in this Agreement, neither Party has, and neither Party shall attempt to assert, the authority to make commitments for or to bind the other Party to any obligation.

ARTICLE TWO
Services - Payment

2.1 The District will provide transportation in connection with programs operated by the City Parks & Recreation Department, as requested by the City, and as more fully described in the Purchase Orders issued from time to time by the City, and in the attached Transportation Schedule.

2.2 Purchase Orders shall be issued for each of the City Parks & Recreation Department programs for which transportation services are contemplated under this Agreement.

2.3 The City will reimburse the District for the cost of transportation provided at the rate of \$12 per hour per vehicle, and \$1.65 per mile traveled by each vehicle. In the event that the District's authorized transportation rates are revised, the District shall provide written notice to

the City, and such revisions shall be incorporated herein effective as of the beginning of the next succeeding Fiscal Year. The City shall make such payments from current revenues available to it.

2.4 The City desires to make timely payment. The City must receive the District's invoice requesting payment in full no later than five business days following the end of August for each Fiscal Year during which this Agreement is in effect.

ARTICLE THREE

Compliance with Laws

The District and the City shall comply with all applicable laws in performance of its obligations under this Agreement.

ARTICLE FOUR

Risk Allocation - Limitation of Liability

4.1 ***No Indemnification.*** The Parties expressly agree that no Party shall have the right to seek indemnification or contribution from any other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

4.2 ***Governmental Function.*** The Parties expressly agree that, in all things relating to this Agreement, the City and the District are performing governmental functions, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City or of the District which, in any way, pertains to or arises out of to this Agreement falls within the definition of governmental function.

4.3 ***Exclusion of Incidental and Consequential Damages.*** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither Party shall be liable to the other Party (nor to any person claiming rights derived from such Party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the Party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided in Section 4.4 below. Either Party hereto shall not be liable to the other Party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other Party regardless of whether the Party receiving said information from the other Party was advised, had other reason to know, or in fact knew thereof.

4.4 ***Maximum Aggregate Liability.*** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY THE OTHER PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND**

ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID OR PAYABLE BY THE ONE PARTY TO THE OTHER UNDER THE TERMS OF THIS AGREEMENT.

4.5 *Intentional Risk Allocation.* The District and the City each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the Parties.

4.6 *Sovereign Immunity.* The District and the City reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

ARTICLE FIVE

Term and Termination

5.1 *Term.* This Agreement shall be effective for an initial term of one year from the Effective Date, and shall continue in effect from year-to-year thereafter, subject to the availability of current funding and subject to termination in accordance with the provisions of Section 5.2 below.

5.2 *Termination.* Either Party may terminate this Agreement for any reason, or for no reason whatsoever, by giving written notice to the other Party no less than 30 days prior to the date of termination.

ARTICLE SIX

General Terms and Conditions

6.1 *Amendment.* No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless in writing of equal dignity hereto.

6.2 *Effect of Partial Invalidity.* If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then:

- (a) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected;
- (b) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling;

(c) the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein; and

(d) if the ruling, and/or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

6.3 *No Waiver.* The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the right of such Party to require performance of that provision. Any waiver by either Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

6.4 *Binding on Successors.* This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns permitted by this Agreement.

6.5 *Section Headings.* The article headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

6.6 *Representation of Counsel; Mutual Negotiation.* Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

6.7 *Counterparts.* This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages any of which may be executed by less than all of the Parties provided that each Party executes at least one such duplicate or duplicate signature page. The Parties stipulate that a photostatic copy of an executed original will be admissible in evidence for all purposes in any proceeding as between the Parties.

6.8 *Construction and Performance.* This Agreement shall be construed under and in accordance with the laws of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas.

Each person signing below represents that he or she has read this Agreement in its entirety (including any and all Schedules and Exhibits); understands its terms; is duly authorized to execute this Agreement on behalf of the Party indicated below by his or her name; and agrees on behalf of such Party that such Party will be bound by those terms.

(SIGNATURES CONTINUE ON NEXT PAGE)

Executed this 12th day of May, 2004 ("Effective Date").


ATTEST:

CITY OF EL PASO

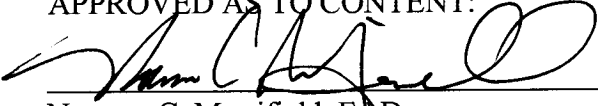
Richarda Duffy Momsen
City Clerk

Joe Wardy
Mayor

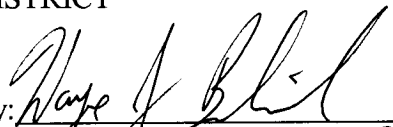
APPROVED AS TO FORM:


John F. Nance
Assistant City Attorney


APPROVED AS TO CONTENT:


Norman C. Merrifield, Ed.D.
Director
Parks & Recreation Department


YSLETA INDEPENDENT SCHOOL
DISTRICT

By: 
Name Printed: Wayne J. Belisle
Title: President

ATTEST:


Name Printed: Andy Ramirez
Title: Secretary

APPROVED AS TO FORM:


Name Printed: S. A. SAFI
Title: Attorney

2004 CLUB REC YISD TRANSPORTATION SCHEDULE

EXHIBIT "A"

<u>LOCATION OF PICK UP</u>	<u>DATE</u>	<u>PICK UP TIME</u>	<u>DESTINATION</u>	<u># OF BUSES</u>	<u>ARRIVAL TIME TO:</u>	<u># HOURS</u>	<u>MILES</u>	<u>COST</u>
<u>PAVO REAL RECREATION CENTER - ENRIQUE VALADEZ 858-1929</u>								
Pavo Real Rec Center 9301 Alameda	6/16/2004	9:30am	Bowl El Paso 11144 Pellicano	2	12:30pm	Pavo Real Rec Center 9301 Alameda	3.5 20	\$ 162.00
Pavo Real Rec Center 9301 Alameda	6/30/2004	9:30am	El Paso Zoo 4001 E. Paisano	2	12:30pm	Pavo Real Rec Center 9301 Alameda	3.5 25	\$ 178.50
Pavo Real Rec Center 9301 Alameda	7/9/2004	9:30am	Armijo Pool 911 S. Ochoa	2	12:30pm	Pavo Real Rec Center 9301 Alameda	3.5 25	\$ 178.50
Pavo Real Rec Center 9301 Alameda	7/14/2004	9:30am	Roller King 10826 Pellicano	2	12:30pm	Pavo Real Rec Center 9301 Alameda	3.5 20	\$ 162.00
Pavo Real Rec Center 9301 Alameda	7/30/2004	10:00 AM	Wet N' Wild I-10 Exit 0 El Paso Zoo 4001 E. Paisano	2	3:00 PM	Pavo Real Rec Center 9301 Alameda	5 100	\$ 450.00
SUB-TOTAL ESTIMATED EXPENSE:								\$ 1,131.00
<u>CAROLINA RECREATION CENTER - LADISLAO VICENCIO 594-8934</u>								
Carolina Rec Center 563 N. Carolina	6/11/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	6/16/2004	9:30am	Freeway Lanes 6926 Gateway East	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	6/18/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	6/25/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	6/30/2004	9:30am	Roller King 10826 Pellicano	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	7/2/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	7/9/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	7/14/2004	9:30am	El Paso Zoo 4001 E. Paisano	2	12 Noon	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	7/16/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	7/23/2004	9:30am	Hawkins Pool 1500 Hawkins	2	12:30pm	Carolina Rec Center 563 N. Carolina	3.5 20	\$ 162.00
Carolina Rec Center 563 N. Carolina	7/30/2004	9:30am	Wet N' Wild I-10 Exit 0	2	5:30 PM	Carolina Rec Center 563 N. Carolina	8 80	\$ 456.00
SUB-TOTAL ESTIMATED EXPENSE:								\$ 2,076.00

Factors used: * all 1/2 hrs rounded off to full hour * \$12.00/hr + \$1.65/mile per bus

PO # GRAND TOTAL: YSLETA INDEPENDENT SCHOOL DISTRICT TRANSPORTATION:

\$3,207.00